

# **EXHIBIT K**

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING

In Re:

USA COMMERCIAL MORTGAGE  
COMPANY,  
d/b/a USA CAPITAL,

Respondent.

**FINAL ORDER CONDITIONING  
MORTGAGE BROKER'S LICENSE**

The STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF MORTGAGE LENDING ("Division"), having served USA Commercial Mortgage Company, d/b/a USA Capital ("Respondent"), on May 1, 2006, with an **Order Conditioning Mortgage Broker's License**, attached hereto as Exhibit 1, and incorporated herein by this reference, notifying Respondent that a final order would be entered unless, within 20 days after entry and receipt of the order, Respondent requested in writing a hearing to contest the charges, and the Respondent having failed to request a hearing in this matter, and good cause appearing;

IT IS HEREBY ORDERED that Respondent's license is conditioned upon the Respondent not making any loans secured by liens on real property funded by private, non-institutional investors; Respondent may only make loans secured by liens on real property funded by institutional investors.

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1 The Division is currently conducting an investigation into USA's past activities and does  
2 not represent that the Factual Allegations in the attached Exhibit 1 are complete, or that the  
3 entry of the Final Order conditioning of Respondent's license will be the only action that the  
4 Division intends to take against Respondent.

6  
7 DATED this 9th day of June <sup>28</sup>~~30~~ 2006.

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9 DIVISION OF MORTGAGE LENDING

10  
11 By:   
12 SCOTT BICE, COMMISSIONER  
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**AFFIDAVIT OF SERVICE**

STATE OF NEVADA     )  
                                      )  
COUNTY OF CLARK    )

I HEREBY CERTIFY that on the 12<sup>th</sup> day of June 2006, I served the foregoing Final  
Order Conditioning Mortgage Broker's License upon USA Commercial Mortgage Company  
dba USA Capital at 4484 S. Pecos Road, Las Vegas, State of Nevada, by:


1. Personally delivering a copy to the following person at: 4484 S. Pecos Road,  
Las Vegas, State of Nevada

  
\_\_\_\_\_  
Person Receiving Service  
  
\_\_\_\_\_  
Person Making Service

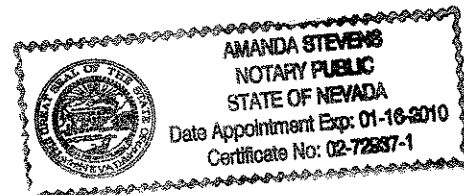
SUBSCRIBED AND SWORN to me

This 12 day of June 2006.

By:



NOTARY PUBLIC in and for said  
County and State



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING

In re:

USA COMMERCIAL MORTGAGE  
COMPANY, d/b/a USA CAPITAL,

Respondent.

**ORDER CONDITIONING MORTGAGE BROKER'S LICENSE**

**NOTICE OF RIGHT TO REQUEST HEARING**

The licensing and regulation of mortgage brokers in the State of Nevada is governed by chapter 645B of the Nevada Revised Statutes ("NRS") and chapter 645B of the Nevada Administrative Code ("NAC"). The State of Nevada, Department of Business and Industry, Mortgage Lending Division ("Division") has the general duty to exercise supervision and control over mortgage brokers and mortgage brokering activity. NRS 645B.060(1), NRS 645B.690 (1)(a) and NRS 645B.670. Pursuant to that authority, the Division makes the following Findings of Fact, Conclusions of Law, and Order as follows:

**FACTUAL ALLEGATIONS**

1. USA Commercial Mortgage Company, dba USA Capital ("USA") is a licensed mortgage broker operating within the State of Nevada. USA Capital was issued a mortgage broker's license pursuant to NRS 645B on January 11, 1990.
2. On Thursday, April 13, 2006, USA filed a voluntary petition for reorganization under Chapter 11 in the U.S. Bankruptcy Court of the Southern District of Nevada.
3. On or after April 13, 2006, USA stated to the Division that a significant number of borrowers were currently, and should have previously been considered delinquent on the payment of loans secured by liens on real property. USA also indicated that it continued to pay investors the stated amount of interest on loans which should have been considered delinquent.

1           4.       Thomas Allison retained by USA as Chief Restructuring Officer, stated to the  
2 Division that USA had continued to pay investors on loans which had defaulted from other  
3 loans which had partial or complete payments of principal.

4           5.       USA controlled and directed the activity of the individual trust accounts to which  
5 monies were collected from borrowers for complete or partial repayment of principal and  
6 interest payments on loans secured by liens on real property.

7           6.       USA failed to reveal on its required monthly activity reports to the Commissioner  
8 that it had borrowers/ debtors with loans secured by liens on real property who had failed to  
9 make two or more consecutive payments in accordance with the terms of their loans. USA  
10 also failed to notify investors/lenders that borrowers had failed to make two or more  
11 consecutive payments in accordance with the terms of their loans secured by liens on real  
12 property.

### 13                               ALLEGED VIOLATIONS OF LAW

14           The licensing and regulation of mortgage brokers and mortgage agents in the State of  
15 Nevada is governed by NRS chapter 645B and NAC chapter 645B. The Division has the duty  
16 to exercise supervision and control over mortgage brokers. NRS 645B.060(1). In addition,  
17 the Division has the responsibility to take disciplinary action for certain violations of NRS  
18 chapter 645B or NAC chapter 645B.

19           NRS 645B.670 provides in relevant part:

20                       2. For each violation committed by a mortgage broker, the  
21 Commissioner may impose upon the mortgage broker an  
22 administrative fine of not more than \$10,000, may suspend,  
23 revoke or place conditions upon his license, or may do both, if the  
24 mortgage broker, whether or not acting as such:

25                       (c) Does not conduct his business in accordance with law or has  
26 violated any provision of this chapter, a regulation adopted  
27 pursuant to this chapter or an order of the Commissioner;  
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1           1.       USA controlled and directed the activity of individual trust accounts where  
2 money paid by borrowers for complete or partial repayment of principal and interest on their  
3 loans secured by liens on real property was to be kept. NRS 645B.175(4) requirements o

1 mortgage brokers when mortgage brokers maintain/service accounts where money paid by  
 2 borrowers for complete or partial repayment on loans secured by liens on real property is  
 3 kept. In relevant part, NRS 645B.175 states:

4  
 5 4. Except as otherwise provided in this section, all money paid to  
 6 a mortgage broker and his mortgage agents by a person in full or  
 7 in partial payment of a loan secured by a lien on real property,  
 8 must:

9 (a) Be deposited in:

10 (1) An insured depository financial institution; or

11 (2) An escrow account which is controlled by a person who is  
 12 subject to instructions regarding the account which are approved  
 13 by the parties.

14 (b) Be kept separate from money:

15 (1) Belonging to the mortgage broker in an account appropriately  
 16 named to indicate that it does not belong to the mortgage broker.

17 (2) Received pursuant to subsection 1.

18 5. Except as otherwise provided in this section, the amount held  
 19 in trust pursuant to subsection 4:

20 (a) Must be released, upon the deduction and payment of any fee  
 21 or service charge due the mortgage broker, to each investor who  
 22 owns a beneficial interest in the loan in exact proportion to the  
 23 beneficial interest that he owns in the loan; and

24 (b) Must not be released, in any proportion, to an investor who  
 25 owns a beneficial interest in the loan, unless the amount described  
 26 in paragraph (a) is also released to every other investor who owns  
 27 a beneficial interest in the loan.

28 6. An investor may waive, in writing, the right to receive one or  
 more payments, or portions thereof, that are released to other  
 investors in the manner set forth in subsection 5. A mortgage  
 broker or mortgage agent shall not act as the attorney-in-fact or  
 the agent of an investor with respect to the giving of a written  
 waiver pursuant to this subsection. Any such written waiver applies  
 only to the payment or payments, or portions thereof, that are  
 included in the written waiver and does not affect the right of the  
 investor to:

(a) Receive the waived payment or payments, or portions thereof,  
 at a later date; or

(b) Receive all other payments in full and in accordance with the  
 provisions of subsection 5.

9. If a mortgage broker or a mortgage agent receives any money  
 pursuant to this section, the mortgage broker or mortgage agent,  
 after the deduction and payment of any fee or service charge due  
 the mortgage broker, shall not release the money to:

(a) Any person who does not have a contractual or legal right to  
 receive the money or



1 (b) Any person who has a contractual right to receive the money  
2 if the mortgage broker or mortgage agent knows or, in light of all  
3 the surrounding facts and circumstances, reasonably should know  
4 that the person's contractual right to receive the money violates  
any provision of this chapter or a regulation adopted pursuant to  
this chapter.

5 (a) USA violated NRS 645B.175 (4)(a) because it did not deposit money received  
6 from borrowers for complete or partial repayment of principal and interest payments on loans  
7 secured by liens on real property in an insured depository financial institution or in an escrow  
8 account controlled by a person subject to instructions regarding the account that were  
9 approved by the parties. Rather, USA took borrower money it received in full or partial  
10 repayment of borrower loans secured by liens on real property and used this money to pay  
11 investors of loans that were in default.

12 (b) USA violated NRS 645B.175(5)(a) because it did not release, after payment of  
13 any fee or service charge due to the mortgage broker, money received for complete or partial  
14 repayment of principal and interest on loans secured by liens on real property to each investor  
15 who owned a beneficial interest in the exact proportion to the interest that the investor owned  
16 in the loan; rather, USA took the money it received in complete or partial repayment of  
17 principal and interest on loans secured by liens on real property and used this money to pay  
18 investors of loans that were in default.

19 (c) USA violated NRS 645B.175(9)(a) because it released money to investors of  
20 loans secured by liens on real property that were in default who did not have a contractual or  
21 legal right to receive the money. Rather USA took the money it received in full or partial  
22 repayment of principal and interest on loans secured by liens on real property and used this  
23 money to pay the investors of loans that had defaulted.

24 2. USA violated NRS 645B.250, which states:

25  
26 Except pursuant to a contract for the collection or servicing of a  
27 loan which is governed by the requirements established by the  
28 Government National Mortgage Association, Federal Home Loan  
Mortgage Corporation or Federal National Mortgage Association, a  
mortgage broker or mortgage agent shall not advance payments to



1 an investor on behalf of a person who has obtained a loan secured  
2 by a lien on real property and who has defaulted in his payments.

3 (a) Mr. Allison admitted to the Division that USA was advancing payments to  
4 investors on behalf of borrowers who had defaulted on loan secured by liens on real property.

5 3. USA violated NRS 645B.260, which states:

6 1. If a mortgage broker maintains any accounts described in  
7 subsection 4 of NRS 645B.175 in which the mortgage broker  
8 deposits payments from a debtor on a loan secured by a lien on  
9 real property and, on the last day of any month, the debtor has  
10 failed to make two or more consecutive payments in accordance  
11 with the terms of the loan, the mortgage broker shall:

12 (a) Include in the report that the mortgage broker submits to  
13 the Commissioner pursuant to subsection 2 of NRS 645B.080 the  
14 information relating to delinquencies in payments and defaults that  
15 is required by the regulations adopted pursuant to subsection 2;

16 (b) Not later than 15 days after the last day of each such  
17 month, mail to the last known address of each investor who owns  
18 a beneficial interest in the loan a notice containing the information  
19 relating to delinquencies in payments and defaults that is required  
20 by the regulations adopted pursuant to subsection 2; and

21 (c) Comply with the provisions of this section each month on a  
22 continuing basis until:

23 (1) The debtor or his designee remedies the delinquency  
24 in payments and any default; or

25 (2) The lien securing the loan is extinguished.

26 2. The Commissioner:

27 (a) Shall adopt regulations prescribing the information relating  
28 to delinquencies in payments and defaults that a mortgage broker  
must include in his report to the commissioner and in the notice  
mailed to investors pursuant to subsection 1. Such regulations  
may provide for variations between the information that a  
mortgage broker must include in his report to the Commissioner  
and the information that a mortgage broker must include in the  
notice mailed to investors.

(b) May adopt any other regulations that are necessary to carry  
out the provisions of this section.

With regard to notice obligations owed to investors, NAC 645B.070  
further defines the obligations of a mortgage broker. NAC 645B.070 states in  
relevant part, that:

2. If, on the last day of any month, a debtor has failed to  
make two or more consecutive payments in accordance with the  
terms of the loan, a mortgage broker who is performing loan

servicing and maintains any accounts described in subsection 4 of NRS 645B.175 shall:

(a) Include in his report to the Commissioner:

(1) The name, address and telephone number of the debtor;  
(2) The total number and amount of any payments made on the current delinquency;

(3) The outstanding balance of the loan and any accrued interest on the last day of the month for which the report is submitted;

(4) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default; and

(5) The date on which the mortgage broker sent the notice to investors required pursuant to paragraph (b) of this subsection and paragraph (b) of subsection 1 of NRS 645B.260.

(b) Mail a notice containing the following information to the last known address of each investor who owns a beneficial interest in the loan not later than 15 days after the last day of each such month:

(1) The name, address and telephone number of the debtor;

(2) The total number of months and days that the debtor has failed to make a payment;

(3) The outstanding balance of the loan and any accrued interest on the last day of the month for which the notice is submitted; and

(4) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default.

3. If the mortgage broker is not servicing any loans in which a debtor has failed to make two or more consecutive payments in accordance with the terms of the loan, the monthly report required pursuant to subsection 1 must state that fact.

4. The mortgage broker must comply with the provisions of subsection 2 each month until:

(a) The debtor or his designee remedies the delinquency in payments and any default; or

(b) The lien securing the loan is extinguished.

5. The Commissioner may refuse to renew the license of a mortgage broker who has not submitted a monthly report required by subsection 1 for 1 or more of the preceding 12 months.

(a) USA violated NRS645B.280(1)(a) because it failed to report the Division on its monthly activity reports that it had any delinquent loans secured by liens on real property, yet after USA filed bankruptcy Allison informed the Division that USA had delinquent loans.

1 (b) USA violated NRS645B.280(1)(b) because it did not, no later than 15 days after  
2 the last day of the month, when it was aware that debtors had failed to make two or more  
3 consecutive payments in accordance with the terms of the loan, mail to investors who owned  
4 beneficial interests in the defaulting loans, the debtors name, address and telephone number,  
5 nor did USA ever mail to investors and of the information required in NRS 645B.070(5), nor  
6 did it indicate in any way to investors that their loans were in default when, in some cases,  
7 borrowers had not paid on their loans secured by liens on real property.

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9 5. USA violated NRS 645B.670. NRS 645B.670 states:

10 Except as otherwise provided in NRS 645B.690:

11 1. For each violation committed by an applicant for a license  
12 issued pursuant to this chapter, whether or not he is issued a  
13 license, the Commissioner may impose upon the applicant an  
14 administrative fine of not more than \$10,000, if the applicant:

15 (a) Has knowingly made or caused to be made to the  
16 Commissioner any false representation of material fact;

17 (b) Has suppressed or withheld from the Commissioner any  
18 information which the applicant possesses and which, if submitted  
19 by him, would have rendered the applicant ineligible to be licensed  
20 pursuant to the provisions of this chapter; or

21 (c) Has violated any provision of this chapter, a regulation  
22 adopted pursuant to this chapter or an order of the Commissioner  
23 in completing and filing his application for a license or during the  
24 course of the investigation of his application for a license.

25 2. For each violation committed by a mortgage broker, the  
26 Commissioner may impose upon the mortgage broker an  
27 administrative fine of not more than \$10,000, may suspend,  
28 revoke or place conditions upon his license, or may do both, if the  
mortgage broker, whether or not acting as such:

(a) Is insolvent;

(b) Is grossly negligent or incompetent in performing any act  
for which he is required to be licensed pursuant to the provisions  
of this chapter;

(c) Does not conduct his business in accordance with law or  
has violated any provision of this chapter, a regulation adopted  
pursuant to this chapter or an order of the Commissioner;

(d) Is in such financial condition that he cannot continue in  
business with safety to his customers;

(e) Has made a material misrepresentation in connection with  
any transaction governed by this chapter;

1 (f) Has suppressed or withheld from a client any material facts,  
2 data or other information relating to any transaction governed by  
the provisions of this chapter which the mortgage broker knew or,  
by the exercise of reasonable diligence, should have known;

3 (g) Has knowingly made or caused to be made to the  
4 Commissioner any false representation of material fact or has  
5 suppressed or withheld from the Commissioner any information  
which the mortgage broker possesses and which, if submitted by  
him, would have rendered the mortgage broker ineligible to be  
licensed pursuant to the provisions of this chapter;

6 (h) Has failed to account to persons interested for all money  
7 received for a trust account;

8 (i) Has refused to permit an examination by the Commissioner  
of his books and affairs or has refused or failed, within a  
reasonable time, to furnish any information or make any report that  
9 may be required by the Commissioner pursuant to the provisions  
of this chapter or a regulation adopted pursuant to this chapter;

10 (j) Has been convicted of, or entered a plea of nolo contendere  
11 to, a felony relating to the practice of mortgage brokers or any  
crime involving fraud, misrepresentation or moral turpitude;

12 (k) Has refused or failed to pay, within a reasonable time, any  
13 fees, assessments, costs or expenses that the mortgage broker is  
required to pay pursuant to this chapter or a regulation adopted  
pursuant to this chapter;

14 (l) Has failed to satisfy a claim made by a client which has  
15 been reduced to judgment;

16 (m) Has failed to account for or to remit any money of a client  
within a reasonable time after a request for an accounting or  
remittal;

17 (n) Has commingled the money or other property of a client  
18 with his own or has converted the money or property of others to  
his own use;

19 (o) Has engaged in any other conduct constituting a deceitful,  
fraudulent or dishonest business practice;

20 (p) Has repeatedly violated the policies and procedures of the  
mortgage broker;

21 (q) Has failed to exercise reasonable supervision over the  
activities of a mortgage agent as required by NRS 645B.460;

22 (r) Has instructed a mortgage agent to commit an act that  
23 would be cause for the revocation of the license of the mortgage  
broker, whether or not the mortgage agent commits the act;

24 (s) Has employed a person as a mortgage agent or authorized  
25 a person to be associated with the mortgage broker as a mortgage  
agent at a time when the mortgage broker knew or, in light of all  
the surrounding facts and circumstances, reasonably should have  
26 known that the person:

27 (1) Had been convicted of, or entered a plea of nolo  
contendere to, a felony relating to the practice of mortgage agents  
or any crime involving fraud, misrepresentation or moral turpitude;  
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(2) Had a financial services license or registration suspended or revoked within the immediately preceding 10 years;

(t) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS; or

(u) Has not conducted verifiable business as a mortgage broker for 12 consecutive months, except in the case of a new applicant. The Commissioner shall determine whether a mortgage broker is conducting business by examining the monthly reports of activity submitted by the mortgage broker or by conducting an examination of the mortgage broker.

(a) USA violated NRS 645B.670(1)(a) because it knowingly made to the Division a false representation of material fact, To Wit: USA did not indicate on its monthly activity reports to the Division that it had any loans in default, and therefore represented that all of its loans were being paid by borrowers in accordance with terms of the loan.

(b) USA violated NRS 645B.670(c) because it has violated NRS 645B.175, NRS 645B.280, and NAC 645B.070, as referenced above.

(c) USA violated NRS 645B.670(f) because it suppressed or withheld from investors the fact that many of the investors' loans secured by liens on real property were not being paid in accordance with the terms of the loan agreements, but were in fact in default.

(d) USA violated NRS 645B.670(o) because it engaged in a deceitful, fraudulent or dishonest business practice, To Wit: USA took money from accounts containing money from borrowers who had paid off their loans and used that money to pay investors whose loans were in default.

6. The Division is still conducting an investigation into USA's past activities and does not represent that the findings listed in this Order Conditioning Mortgage Broker's License are complete, or that the action it seeks to take against USA in this Order will be the only action that the Division intends to take against USA.

7. NRS 645B.670(2) allows the Commissioner to suspend, revoke or place conditions upon a mortgage broker's license if the broker violates NRS 645B.670. The Division alleges that USA has violated provisions of NRS 645B.670. Therefore, the Commissioner may suspend, revoke or condition USA's mortgage broker license. The Commissioner therefore imposes certain conditions USA's mortgage broker's license. These



1 conditions are: USA will not make any loans secured by liens on real property funded by  
2 private, non-institutional investors; USA may only make loans secured by liens on rea  
3 property funded by institutional investors.

4 **ORDER**

5 **NOW, THEREFORE, IT IS HEREBY ORDERED** that USA mortgage broker's license is  
6 conditioned upon USA not making any loans secured by liens on real property funded by  
7 private, non-institutional investors; USA may only make loans secured by liens on rea  
8 property funded by institutional investors.

9 **IT IS FURTHER ORDERED** that, pursuant to NRS 645B.750, upon written application  
10 to the Division, that USA entitled to a hearing with regard to this Order. Should USA no  
11 request a hearing within **twenty (20) days** of the receipt of this Order, the Division will enter a  
12 Final Order in this matter as required by NRS 645B.750(2).

13 DATED this 1<sup>st</sup> day of May 2006.

14 STATE OF NEVADA  
15 DEPARTMENT OF BUSINESS AND INDUSTRY  
16 DIVISION of MORTGAGE LENDING

17 By:

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20 Scott Bice, Commissioner  
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